IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8106 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUSHOTTAMBHAI MULJIBHAI MAKWANA - Petitioner(s)
Versus
STATE OF GUJARAT THRO' THE PANCHAYAT & & 2 - Respondent(s)

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Appearance :

MR JAL SOLI UNWALA for the Petitioner.
Mr. Maulik Nanavati, Assistant GOVERNMENT PLEADER for Respondent nos.1 and 2.
MR HS MUNSHAW for Respondent no.3.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 01/05/2007

ORAL JUDGMENT

The present petition has been preferred against the order dated 17th October, 2006 passed by

respondent no. 3 (Annexure “H” to the memo of the petition), whereby the present petitioner has been disqualified for becoming member of Viramgam Taluka Panchayat under section 31(1) of the Gujarat Panchayats Act, 1993.

2. I have heard the learned counsel for the petitioner for the petitioner who has submitted that the show cause notice was given to the present petitioner under section 71(1) of the Act of 1993 dated 15th May, 2003 which was replied on 1st July, 2006 and thereafter, notice was given under section 32(1)(a) of the Act of 1993 dated 26th July, 2006 to the effect that the petitioner has not paid Rs. 36875/- as dues under Bombay Land Revenue Code, 1879. This show cause notice was replied by the petitioner on 26th July, 2006. In the meanwhile, earlier show cause notice given under section 71(1) of the Act of 1993 was withdrawn by the letter dated 7th October, 2006. The petitioner was held as disqualified for becoming member of Viramgam Taluka Panchayat by the District Development Office vide order dated 17th August, 2006 against which an appeal was preferred by the petitioner being Appeal No.1/161 of 2006 alongwith the stay application. The stay application was not decided for a considerably long period, that is why, Special Civil Application no. 23088 of 2006 was disposed of vide order dated 10th November, 2006 with suitable direction and thereafter, stay application was decided vide order dated 15th November, 2006 and stay was refused and so Special

Civil Application no. 23171 of 2006 was preferred which was also disposed of by this Court wherein a direction was given to the petitioner to deposit an amount of Rs. 36,875/- vide order dated 14.12.2006 and the amount has been deposited with interest. Meanwhile, the appeal has also been dismissed by the Development Commissioner vide order dated 14th March, 2007. Against this order, the present petition has been preferred mainly for the reason that there is a breach of section 30(I) of the Act of 1993. No such special notice as envisaged under the Act of 1993 was ever given to the present petitioner. Moreover, the final order passed by the concerned officer which is dated 28th February, 2005 for the alleged dues under Bombay Land Revenue Code was never served upon the present petitioner. In fact, the petitioner was using the land in question for several years for manufacturing bricks. Necessary permissions were also obtained by the present petitioner for the said usage of the land in question as regularly extension applications were also preferred, but on the last occasion, despite the application for renewal of the licence/permission was preferred to the concerned respondent authority, the said application was not decided and the petitioner continued manufacturing bricks in the said land, expecting permission which will be given by the concerned Revenue Officer. The concerned Revenue Officer has treated this use of the land as breach of the provisions of Bombay Land Revenue Code and passed the order dated 28th February, 2005. This order was never served upon the

petitioner. This fact has been stated in the reply of the show cause notice by the petitioner dated 26th July, 2006 that had there been a proper service of notice of the order dated 28th February, 2005, the petitioner would have deposited Rs. 36,875/-. Even otherwise also, as per the order passed by this Court dated 14th December, 2006, the amount has already been deposited with interest. Despite the fact that the petitioner was using the land in question for manufacturing of bricks since last several years, and renewal application was already pending before the concerned Revenue Officer, no prompt decision was taken by the concerned Revenue Officer and so the petitioner continues manufacturing of bricks. For this technical defect, status already achieved by the petitioner of becoming member of Viramgam Taluka Panchayat and subsequently of President of Viramgam Taluka Panchayat, cannot be taken away by the respondent authorities, especially when no special notice was given as envisaged under section 30(I) of the Act of 1993.

3. It is contended by the learned Assistant Government Pleader for respondent nos. 1 and 2 that the order dated 14th March, 2007 passed by the Development Commissioner is absolutely true, correct and in consonance with facts of the case. The amount due towards the State under Bombay Land Revenue Code was not paid and hence the petitioner is disqualified to become the member of Taluka Panchayat. The amount is paid after the order dated 14th December, 2006

passed in Special Civil Application no. 23171 of 2006 and looking to the provisions of the Act of 1993, the order passed by the Development Commissioner as well as the order passed by the District Development Officer disqualifying the petitioner is true, correct and legal and hence this petition may not be entertained.

4. I have also heard the learned counsel for respondent no. 3 who has adopted the arguments canvassed by the learned Assistant Government Pleader.

5. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, the order dated 17th October, 2006 passed by the District Development Officer (at Annexure "H" to the memo of the petition) as well as the order dated 14th March, 2007 passed by the Development Commissioner, State of Gujarat, Gandhinagar (at Annexure "O" to the memo of the petition) are hereby quashed and set aside mainly for the following facts and reasons.

(i) The present petitioner was manufacturing bricks on the land in question since last several years. Necessary permissions were obtained therefor from the concerned revenue authorities. For the last year, an application for renewal/extension of such permission was preferred. The application was not decided by the revenue authority under the

Bombay Land Revenue Code, 1879. As the petitioner was continuing manufacturing bricks since last several years, he also continued for the last year and he was expecting permission from the concerned revenue authority. Thereafter that authority passed an order on 28th February, 2005 for the breach of the provisions of the Bombay Land Revenue Code as, without permission, the petitioner continued manufacturing bricks. The application preferred by the petitioner for extension of permission or licence was still not decided. Penalty imposed was Rs. 36,875/-. This order was not received by the petitioner till he received notice issued by the District Development Officer for disqualification. This fact has been reflected in the reply dated 26th July, 2006. At this stage, the learned Assistant Government Pleader has pointed out that the said order dated 28th February, 2005 was served to the petitioner which is denied by the present petitioner and submitted that the said order was served upon the employee of the petitioner. Thus, it was under dispute whether the order under Bombay Land Revenue Coded was served upon the petitioner or not. Thereafter, a notice under section 71(1) of the Act of 1993 was issued on 15th May, 2006. Thereafter, reply was filed by the petitioner on 1st June, 2006. Again another notice was issued under section 32(1)(a) of the Act of 1993. Again this show cause notice was replied on 26th July, 2006. Meanwhile,

earlier notice issued under section 71(I) of the Act was withdrawn on 7th October, 2006. Thereafter, District Development Officer passed an order on 17th October, 2006 disqualifying the present petitioner under section 32(1)(a) of the Act of 1993. Looking to the provisions of the Act of 1993, especially sub-section (i) of section 30 of the Act of 1993, special notice ought to be issued to the petitioner. Admittedly, no such special notice in the prescribed form has ever been issued to the petitioner. Thus, there is a breach of the provisions of the Act of 1993. This aspect of the matter has not been appreciated by the District Development Officer as well as by the Development Commissioner while disposing of Appeal No.1/161 of 2006 vide order dated 14th March, 2007.

(ii) It is also a matter of fact that the amount in question i.e. Rs. 36,875/- has already been paid by the petitioner with interest.

(iii) It is not appreciated by both the authorities below that the petitioner was manufacturing bricks at the relevant place since years. For the last year also, necessary application for getting extension of permission/licence was given. Obviously, the Revenue Officer took some time in deciding this application. Meanwhile, the petitioner has continued manufacturing of bricks. Looking to the facts and circumstances of the case, it is

apparent that this technical breach is not such that it makes him disqualified from becoming member of Viramgam Taluka Panchayat, especially when it is in dispute whether the order dated 28th February, 2005 was ever served upon the petitioner, coupled with the fact that the amount in question has already been paid with interest and also keeping in mind the reply filed by the petitioner to the show cause notice dated 26th July, 2006 wherein also the same contention has been raised that the impugned order dated 28th February, 2006 was not served and therefore, the amount of Rs. 36,875/- was not paid, otherwise, willingness was already shown to make the payment of the amount.

6. As a cumulative effect of the aforesaid facts and reasons, the impugned order dated 17th October, 2006 passed by the District Development Officer, Ahmedabad (at Annexure “H” to the memo of the petition) as well as the order dated 14th March, 2007 passed by the Development Commissioner, State of Gujarat, Gandhinagar (Annexure “O” to the memo of the petition) are hereby quashed and set aside. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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